

BACKGROUND PAPER FOR HEARING

BUREAU FOR PRIVATE POSTSECONDARY AND VOCATIONAL EDUCATION (BPPVE)

IDENTIFIED ISSUES, QUESTIONS FOR THE BOARD, AND BACKGROUND CONCERNING ISSUES

FIRST SUNSET REVIEW: The Bureau for Private Postsecondary and Vocational Education (BPPVE or Bureau) was established on January 1, 1998, pursuant to the enactment of AB 71 (Wright), Chapter 78, Statutes of 1997, for the purpose of approving and regulating private postsecondary and vocational educational institutions located in California. AB 71 also provided that the Bureau be subject to the sunset review process conducted by the Joint Legislative Sunset Review Committee (JLSRC) pursuant to Business and Professions Code Section 473.1 (b) and Education Code Section 94990. AB 1720 (Assembly Committee on Higher Education), Chapter 399, Statutes of 2001, amended Business and Professions Code Section 473.3 to provide that:

(b)...in 2002, and every four years thereafter, the JLSRC in cooperation with the California Postsecondary Education Commission (CPEC) shall hold a public hearing to receive testimony from the Director of Consumer Affairs, the Bureau, private postsecondary educational institutions regulated by the Bureau, and students of those institutions. In those hearings the Bureau shall have the burden of demonstrating a compelling public need for the continued existence of the Bureau and its regulatory program, and that its function is the least restrictive regulation consistent with public health, safety and welfare.

(c) The committee, in cooperation with the California Postsecondary Education Commission, shall evaluate and review the effectiveness and efficiency of the Bureau for Private Postsecondary and Vocational Education, based on the factors and minimum standards of performance that are specified in Section 473.4. The committee shall reports its findings and recommendations as specified in Section 473.5. The Bureau shall prepare an analysis and submit a report to the committee as specified in Section 473.2.

Therefore, this is the initial sunset review of the Bureau pursuant to those provisions. In the Sunset Report submitted by the Bureau to the JLSRC, the Bureau responded to a list of questions that had been prepared by staff of the CPEC as being of key interest in the sunset review and evaluation of the state's regulation of private postsecondary schools and the operation of the Bureau. In addition, in preparing this Background Paper and the Issues and Questions contained therein, the JLSRC staff met with the staff of CPEC to ascertain and discuss those issues, questions, and concerns that were believed to be relevant to a proper evaluation of the state's regulation of the private postsecondary and vocational education institutions and the administration of that regulation by the Bureau. The results of those discussions have been incorporated into this Background Paper.

Historical Background. Prior to 1990, the Superintendent of Public Instruction, in consultation with a 14-member Advisory Council for Private Postsecondary Educational Institutions, was vested with the responsibility for the administration of the state's regulation of private postsecondary and vocational educational institutions under the Private Postsecondary Education Act of 1977. There were six categories of degree-granting institutions and four categories of nondegree-granting institutions. That law allowed accreditation by national accrediting associations recognized by the U.S. Department of Education in lieu of state review and oversight for licensure purposes. The regulatory duties under that law were performed by the Private Postsecondary Education Division of the State Department of Education (Division) and included a procedure for institutions to secure authorization from the state to issue diplomas and degrees. The Division delegated approval of vocational institutions to independent accrediting agencies and did not establish any compliance requirements. However, in the 1980's California earned the reputation as a haven for so-called "diploma mills" – with many degrees and diplomas awarded by California's private postsecondary and vocational institutions being of questionable integrity and value. Further, there was significant financial aid abuse in private schools and colleges.

Because of serious concern about the integrity of the degrees and diplomas from schools with widely varying standards, the lack of enforcement provisions, and the exemptions from state oversight granted in the law, in 1989 the CPEC sponsored SB 190 (Morgan), Chapter 1307, Statutes of 1989, to enact the Private Postsecondary and Vocational Education Reform Act of 1989 (Reform Act). That legislation became effective on January 1, 1990 and established a single, independent agency known as the Council for Private Postsecondary and Vocational Education (Council). The Council was composed of 20 members representing private postsecondary schools, the public, state agencies, and appointees from the Governor and the Legislature - to which the responsibilities of regulation were transferred from the Department of Education following a one year transitional period. The Reform Act also established a single approval process for all private schools, colleges and universities except institutions accredited by the Western Association of Schools and Colleges (WASC).

Also in 1989, AB 1420 (M. Waters) enacted the Maxine Waters School Reform and Student Protection Act of 1989 (Maxine Waters Act) whose provisions were applicable to institutions other than WASC accredited nonprofit institutions that regularly confer degrees after at least two years of study. Two provisions strengthened and expanded minimum standards for the financial condition of an institution, course passage rates and postgraduate employment rates, student protections including refund policies and enrollment agreements, enforcement procedures and penalties. The provisions of the Maxine Waters Act were merged with, and became a part of the Reform Act enacted by SB 190.

In 1995, pursuant to provisions of the Reform Act, CPEC conducted an evaluation of the effectiveness of the Reform Act and submitted its report to the Legislature. CPEC concluded that the Council's administration of the Reform Act had provided significant protection to consumers, had effectively protected the integrity of degrees and diplomas offered by postsecondary institutions, that student and institutional protections represented a balanced view, and that the Council and the Reform Act should be continued by repealing the June 30, 1997, sunset date in the Act.

However, at the end of the 1996 Legislative Session, the Governor vetoed AB 2960 (Firestone and Campbell) that would have extended the sunset date for the Act and the Council. The Governor's veto message raised the following concerns: (1) the level of fees required for compliance and the ability of small schools to stay in business – that larger, more capitalized schools did not have the same problem as smaller schools that operate on a much smaller margin, and (2) the manner in which the staff of the

Council carried out their responsibilities – including reports from schools alleging a pattern of reprisals and vindictiveness, and the need for an administrative appeal process short of litigation.

In response to the Governor’s veto, two urgency bills were enacted the following year (1997) to extend the Reform Act and the Council’s sunset to January 1, 1998. Thereafter, AB 71 was enacted to extend the January 1, 1998 sunset date to January 1, 2005, create the Bureau in the Department of Consumer Affairs (DCA), transfer the administration of the Reform Act from the Council to the Bureau, and make a number of changes to the Reform Act. One notable change was the addition of regulation over a new “registration” category for certain types of programs including intensive English language programs, short-term seminars, employment related programs that cost less than \$2000 and are less than 250 hours in duration, and state occupational or profession licensing exam preparation courses. Registration involves a lesser standard of review than the usual full-scale school review and “approval.”

Current Regulatory System. Since January 1, 1998, the Bureau has been responsible for administering the state’s regulation of private postsecondary and vocational education institutions pursuant to the provisions of the Private Postsecondary and Vocational Reform Act of 1989, as amended up to the present. Those statutory provisions are located in the California Education Code (Title 3, Division 10, Part 59, Chapter 7) Sections 94700 through 94999 (164 separate sections in all.) In addition, the Bureau operates under the authority of the Director of the DCA and, as a result, its operation is also regulated by a number of sections in the Business and Professions Code. The relevant Bureau administrative regulations are located in Title 5 California Code of Regulations, Sections 70000 – 76210.

The intent of the Reform Act was to promote integration of private postsecondary education into all aspects of California’s educational system and to foster and improve the educational programs and services of those institutions while protecting the citizens of California from fraudulent or substandard operations. Specifically, the Reform Act’s Legislative Intent provides the following purposes:

- Ensuring minimum standards of instructional quality and institutional stability, thereby encouraging the recognition by public and private institutions of completed coursework and degrees and diplomas issued by private institutions.
- Establishing minimum standards concerning the quality of education, ethical business practices, health and safety, and fiscal responsibility to provide protection against substandard, transient, unethical, deceptive, or fraudulent institutions and practices.
- Prohibiting the granting of false or misleading educational credentials.
- Prohibiting misleading literature, advertising, solicitation, or representations by private institutions or their agents.
- Protecting the consumer and students against fraud, misrepresentation, or other practices that may lead to an improper loss of funds paid for educational costs, whether financed through personal resources or state and federal student financial aid.
- Recognizing and encouraging quality nongovernmental accreditation, while not ceding the responsibility for state oversight for purposes of approval, if the accreditation process fails to either protect minimum standards of quality or to acknowledge legitimate innovative methods in postsecondary education.
- Establishing an administrative agency staffed by individuals who are knowledgeable about private academic and vocational education and charges with the responsibility of developing policies and procedures for the oversight and approval of private postsecondary and vocational education –

including the responsibility for managing a broadly construed policy and planning process that seeks to improve the state accountability for those institutions as well as to improve the articulation of private postsecondary and vocational education with the public and independent postsecondary educational community. The administrative agency should provide the leadership and planning needed to maintain and develop a strong private sector in the postsecondary and vocational educational community.

The Bureau regulates, and approves or registers, approximately 3000 private postsecondary or vocational education institutions. This includes approval of approximately 2400 private vocational training institutions with an estimated enrollment of 325,000 students, 300 private postsecondary degree-granting institutions with an estimated student enrollment of 88,000 students, and registration of 300 private institutions that provide short career/seminar training, continuing education, intensive English language programs, and license exam preparation courses. In addition, the Bureau is designated as the State Approving Agency for the administration and approval of resident veterans' educational programs. This includes approval of courses offered to veterans and related eligible persons using GI educational benefits by 950 public and private postsecondary degree-granting and vocational institutions with an estimated enrollment of 25,000 veterans using their GI Bill educational benefits. Bureau approval or registration is required before a school may legally operate to offer courses to students or veterans in order for them to be eligible for federal financial aid.

All private nondegree-granting postsecondary or vocational education institutions are required to comply with a common set of standards and requirements. The Bureau conducts an assessment of institutions' operations to determine if the quality and content of each course or program of instruction, training or study may reasonably be expected to achieve the objective for which it is offered. The operational areas assessed by the Bureau include space and equipment requirements, faculty qualifications, disclosure of information about the course and the occupations to which the course leads, student performance records, health and safety standards, and financial responsibility and stability.

Approval of private degree-granting institutions also requires compliance with a common set of standards and requirements. The Bureau reviews each degree program offered by an institution and performs a qualitative assessment of the following: curricula, instruction, faculty, physical facilities, administrative personnel, admission standards, financial resources, governance, institutional purpose and mission, degrees offered, graduation requirements, financial aid policies and practices, and financial stability. All private degree-granting institutions are subject to this regulation except: 1) WASC-accredited institutions that are either incorporated as a nonprofit public benefit corporation or exclusively confer degree upon completion of a course of study of two or more years; 2) religious institutions whose degrees pertain to its religious beliefs; or 3) institutions that comply with certain criteria and are approved by an accrediting agency recognized by the U.S. Department of Education (USDE).

The Bureau also administers the Student Tuition Recovery Fund (STRF) established in 1978 and funded by assessments on regulated schools and their students based on the cost of the course for each student. The purpose of the STRF is to relieve or mitigate enrollment fee losses incurred by students enrolled in private postsecondary institutions that close prior to the student's completion of his or her education, that breach the enrollment agreement made with the student, or that violate provisions of the Reform Act regarding making tuition refunds.

The Bureau is administered by a Bureau Chief, appointed by the Governor and confirmed by the Senate, to whom the Director of Consumer Affairs has delegated the duties granted the Director by the Reform Act. The Director of Consumer Affairs is required to appoint an advisory committee consisting of representatives of educational institutions, student advocates, and employers who hire students, among other parties. The advisory committee is to advise the Bureau concerning the Bureau's administration, licensing, and enforcement functions. (Note: Currently, there is no advisory committee. The Bureau recently submitted candidates to the Director and it is anticipated that appointments will be made to create the advisory committee to assist the Bureau in its future regulatory efforts.)

The Bureau has 71 authorized staff positions and operates on a budget of \$7.7 million (FY 2002-2003), derived from various approval fees assessed from the regulated institutions and \$1.1 million provided by the federal government for the Bureau's approval of programs for veterans' benefits. Prior to granting an institution approval, the Bureau first reviews the very extensive application paperwork submitted by institutions. Thereafter, within a specified time period, the Bureau is required to conduct site visits to the institutions' actual physical plant using site visitation teams made up with members whose educational level is at least equal to that of the programs they are evaluating.

Bureau's Projections for Future Considerations and Improvements. The Bureau's Sunset Report states that the Bureau will be taking action during the current 2002/2003 fiscal year to effect the following changes in its operation:

- **Advisory Board** – At the time of this writing, appointments (made by the DCA Director) are in the works to re-establish Bureau's advisory Board.
- **Appeals Process** – Simplify and streamline current appeal procedures to ensure fair and equitable resolution of appeals in a cost effective and timely manner.
- **Approval Process** – Amend the current cumbersome approval statute and regulation procedures to ensure comprehensive, efficient and effective approval procedures.
- **Arbitration** – Develop and propose regulations that would implement a Bureau-operated voluntary arbitration program as required in statute.
- **Enforcement** – Amend current law to further improve the Bureau's ability to quickly go after violators. This includes, but is not limited to, streamlining legal notification requirements when implementing enforcement actions and revoking or suspending approvals to operate or certificates of authorizations.
- **Processes and Procedures** – A Bureau of State Audits (BSA) report, and a recently completed DCA internal audit, noted considerable deficiencies in the Bureau's procedures and documentation (or lack thereof) relative to its application processing, cashiering, complaint handling, and other activities. The Bureau notes that it is committed to rectifying the noted deficiencies, most of which are related to data collection and management and will be mitigated with the implementation of the Bureau's new data management (SAIL) system.
- **Internet Regulation** – Make the necessary statutory and regulatory changes to keep pace with the special challenges of Internet (on-line) education to ensure student protections and quality of services remain intact.

CURRENT SUNSET REVIEW ISSUES

The following are pertinent current issues or areas of concern for the JLSRC pertaining to the state's regulation of private postsecondary and vocational institutions and the administration of this regulation by the Bureau, along with background information concerning the particular issue. There are also questions staff has asked concerning the particular issue that are believed to be relevant in evaluating the effectiveness of that regulation and where changes may need to be made. The Bureau was provided with these issues and questions and was asked to be prepared to address each one if necessary.

BUREAU ADMINISTRATION ISSUES

ISSUE #1: Should the administration of California's laws regulating private postsecondary and vocational schools continue to be administered by the Bureau, or should some or all of its various programs be administered by a different governmental agency?

Questions for Issue #1: *How effective has the Bureau been since its inception in accomplishing the purposes of the Private Postsecondary and Vocational Reform Act of 1989 and the Maxine Waters Student Protection Act? What criteria does the Bureau use to measure the effectiveness of its performance? What problems does the Bureau recognize in its current administration of the laws and does it have the necessary structure and resources to resolve them?*

Background: In 1997, when AB 71 proposed to create the Bureau and transfer administrative responsibility for the Reform Act to it at the Governor's insistence, concerns were raised that the DCA had little experience in conducting qualitative reviews of institutions that grant academic degrees and serving as the primary advocate and spokesperson for the private postsecondary and vocational education sector. It was noted at that time that no other state in the nation had placed oversight of the private postsecondary and vocational education sector with a consumer affairs agency whose primary function is to license and regulate businesses.

The predecessor to the Bureau, the Council, had earned a reputation for having done much to rid California of its "diploma mill" disrepute. CPEC, in its 1995 evaluation report of the effectiveness of the California's oversight of the private postsecondary and vocational education sector, concluded that California had one of the most rigorous regulatory agencies in the country. CPEC also concluded that the Council and its staff had made significant headway in fulfilling the mission of the Reform Act, and that the Reform Act had improved both the quality and integrity of degrees and diplomas and student consumer protections.

Complaints about the impact of excessive fees on small schools and vindictiveness on the part of Council staff toward schools seeking approval led Governor Wilson to veto the continuation of the Council in favor of having the administration of the Reform Act performed by a new agency, the Bureau, within the Administration. At its inception, the Bureau inherited inadequate, outmoded data collection processes from the Council, and was plagued by serious backlogs relating to school approvals and the handling of student complaints, and inadequate funding in the STRF. The Legislature adopted a requirement for Supplemental Report Language in the 2000 Budget Bill – requiring the Bureau to report on a quarterly basis its progress in eliminating the backlog. In response, the Bureau developed a backlog reduction plan and subsequently reported in the 2000-2001 quarterly

workload reports that it had eliminated most of the backlog and is continuing to process all current work in a timely manner.

To correct the serious deficiencies in its outmoded data collection methods (Microsoft Excel spreadsheets and a Private Postsecondary Data System - PPDS) which made it incapable of reporting the status of its operations with any reasonable accuracy, the Bureau staff-developed, in-house, a new, comprehensive management information system to replace the outmoded systems. The Bureau reports that the new system – the BPPVE School Automation Information Link (SAIL) system – is now operational on a pilot project basis. That system is designed to meet the needs of schools, students, Bureau managers, and other interested parties and is capable of migrating to a larger Department of Consumer Affairs system if and when the latter system is developed. The Bureau reports that the Excel and PPDS data has been updated and corrected (in large part via an exhaustive review of the original source documents in school files) before it is loaded into the new SAIL system.

As a result of the closing of Career West Academy, students of the school made an estimated \$2.0 million in claims against the STRF. The STRF had insufficient funds to pay those claims and in the case of Aguirre v. Hamilton, the judge of the San Francisco Superior Court ordered the DCA/Bureau to pay all timely claims of those students. The Bureau through its statutory authority to make “special assessments” to schools to the STRF, adopted emergency regulations to do so. The Bureau collected additional STRF funds and began paying STRF claims to Career West Academy Students. However, in September of 2000, the Sacramento Superior Court, in the case of California Association of Private Postsecondary Schools v. Hamilton issued an order granting a stay of all special assessment proceedings pending a hearing and decision. A settlement of that case is now pending.

Because of the problems with the STRF, AB 201 (Wright, Chapter 621, Statutes of 2001) revised the fee formula for calculating the STRF quarterly assessments that resulted in an increase in STRF collections to make the fund solvent and capable of paying anticipated claims. AB 201 also required STRF schools to report certain information to their students regarding the STRF, and required the Bureau to account for STRF payments including a requirement to annually report to the Legislature on any special STRF assessment revenue. The Bureau reports that regulations to implement the provisions of AB 201. AB 201 also required the Bureau to adopt regulations for its procedures for complaint processing and disclosure – and the Bureau reports that after undertaking a comprehensive review of its complaint process, that it is now in the process of promulgating the required regulations.

The Bureau inherited a number of problems at its inception, some of which it has, or is in the process of addressing such as the reduction in school approval backlogs, the solvency of the STRF, and the development of a comprehensive and accurate data collection and reporting system. However, the Bureau continues to have problems to address in achieving the purpose of the Reform Act. Complaints persist that the Bureau is not responsive, timely, or consistent in performing its licensing (approval) of schools and its protection of students. The goal of integrating the California private postsecondary educational sector into the overall State educational policy and planning that includes the public and independent postsecondary education sectors is still absent.

ISSUE #2: The Bureau appears to operate in isolation from the State’s regulation of other educational programs – being located in the Department of Consumer Affairs whose constituent licensing regulation is focused on the conduct of businesses and occupations, and not educational endeavors.

Questions for Issue # 2: *How does the Bureau obtain input from the public, the institutions it regulates, employers, consumer representatives and students attending the regulated institutions? Has the Bureau established an advisory body as specified in the law? Does the Bureau have any formal, regular interaction or exchange of information and views with the California Postsecondary Education Commission or other governmental agencies involved in education issues? What options are there for increasing the interaction and communication between the Bureau, CPEC, and other entities involved in educational policy planning and implementation? Would having representation of the Bureau on CPEC and of CPEC on the Bureau's advisory board be helpful in this regard? Would establishing one or more specific task forces made up of representatives of each and other interested parties be a reasonable way to assist the Bureau in accomplishing some specific projects such as drafting revisions to the Bureau's statutes?*

What problems, if any, would be associated with separating regulation of some of the Bureau's programs from the rest? In particular, separating oversight and regulation of the degree-granting schools (academic, applied/occupational, or both) from the remainder of the Bureau's programs and moving it to some other agency whose primary focus is education?

Background: Prior to the establishment of the Bureau as the agency responsible for administering the Reform Act, regulation and oversight of private postsecondary and vocational education institutions was performed by state governmental agencies whose primary focus was education, namely – the Department of Education and the Council for Private Postsecondary and Vocational Education. Both of these agencies had advisory or governing membership representing educational governmental representatives, the public, students, regulated educational institutions and the Legislature.

The recently issued California Masterplan for Education contains the recommendation to transfer all oversight of state-approved private colleges and universities that offer academic degrees at the associate of arts level or higher to the California Postsecondary Education Commission (CPEC), to ensure the quality and integrity of degrees awarded. Concerns are expressed in the Masterplan about difficulties the Bureau has encountered in its efforts to implement the complex, and occasionally conflicting provisions of AB 71, and about the existence of separate governance structures for each sector (public, independent, and private) of postsecondary education. While making no recommendation for moving regulation of unaccredited postsecondary vocational schools, the Masterplan also notes that the Governor has proposed that vocational and workforce preparation programs should be consolidated to achieve greater coordination and common standards for assessing performance. Further, the Masterplan recommends designating CPEC as the state approval agency for veterans' institutions and courses – transferring the approval of such institutions and programs, together with the related \$1.1 million in federal funding to operate that program, from the Bureau to CPEC.

It should be noted that historically, the last two times responsibility for regulating the private postsecondary and vocational institutions was transferred from one state agency to another (Department of Education to the Council, the Council to the Bureau), there has been a serious gap in administration of the law's provisions during the transition period. Consequently, it is not unreasonable to expect that an administrative transitional gap might occur again if some or all of the current regulatory oversight is transferred from the Bureau to another agency or agencies.

ISSUE #3: Two audits of the BPPVE have revealed shortcomings in the agency's operations.

Questions for Issue #3: *What action has the Bureau taken to respond to the State Auditor's audit in 2000? What is the BPPVE's current status regarding resolving the issues raised in that audit? Are there remaining items that still need to be completed? If so, what is the Bureau's plan for completion? What is the Bureau's understanding of what the findings are from the recently completed audit by the Department of Consumer Affairs? Will the Bureau be making a formal public response to that audit as it did to the earlier audit? If so, when and how will it respond? If not, how will the Bureau represent its reaction, criticisms, or agreement with that audit's findings – and present any proposed actions to resolve identified problems? What are the anticipated timelines and outcomes?*

Background: The BSA conducted a review of the Bureau's programs and operations in FY 2000-01 to ensure compliance with statutory requirements. The scope of the BSA audit included a review of the Bureau's (1) application processing procedures; (2) complaint processing; (3) central information systems; (4) administrative procedures; (5) cashiering procedures; (6) personnel procedures; (7) STRF Program; and (8) other operational activities. The BSA audit confirmed findings from the Bureau's own internal operational audit and reported the need for a centralized database system to record and monitor the Bureau's statutory duties (e.g., application processing, complaint processing, STRF transactions, etc.). The Bureau responded by developing the School Automation Information Link (SAIL) pilot system that the Bureau reports that as of September 2002 has eighty-percent (80%) of the Bureau's operations on-line and will be completed by the end of calendar year 2002. The Bureau reports that it has also undertaken development of the application, cashiering, STRF, personnel and administrative procedures recommended by the Bureau/BSA 2001-02 Fiscal Year audit findings. The JLSRC will want the Bureau to provide it with the status regarding the implementation of its actions regarding the specific recommendations of the BSA audit.

Also, the DCA, as a part of its overall effort to audit each of the licensing programs housed within it, has just concluded its own internal audit of the Bureau. At the time of the writing of this Background Paper for the JLSRC hearing in November, the results of that audit, its recommendations, and the Bureau's response were not available. It is expected that they will, however, be available by the time of the hearing and that the Bureau will be able to provide testimony regarding them.

BUREAU POWERS AND DUTIES ISSUES

ISSUE #4: The current statutes under which the Bureau operates appear to be inordinately complex, vague, and contradictory.

Questions for Issue #4: *What problems has the Bureau had with the clarity or complexity of the various provisions of the Private Postsecondary and Vocational Education Reform Act of 1989? Are there contradictory or vague provisions that are difficult or impossible to administer? If so, what are they? If there are problems with the statutes, what steps can be taken to rectify them while preserving the protections they were intended to provide? Is there a reasonable likelihood that there can be a consensus by all of the Bureau's stakeholders (schools, students, consumer advocates, and employers) as to what changes may need to be made? What would be a reasonable time frame for developing such consensus and enacting needed changes?*

Background: There has been almost universal agreement that the statutes under which the Bureau operates are extremely complex and difficult to administer – with some provisions being vague, confusing or contradictory with other provisions. The original Reform Act of 1989 was major rewrite of the law, and included the consolidation of the provisions of two different legislative bills – SB 190 (Morgan) and AB 1402 (Waters.)

CPEC in its 1995 evaluation report on the law and the predecessor Council’s administration noted that, for example provisions related to non-degree vocational education programs are scattered throughout the Reform Act and interspersed with provisions relating to degree programs. Also, that provisions about certain requirements, such as the contents of an institution’s catalog are scattered throughout the Reform Act. CPEC recommended that legislation be developed to restructure the Act with the limited objective of clarifying the law. In addition, CPEC made other recommendations in its report for changes in the law that if still warranted today would require amendments to the Reform Act. To complicate matters further, the legislation creating the Bureau and transferring administration of the Reform Act to it also added additional complexity and confusion with the addition of regulation of the category or “registered” institutions offering specified types of educational programs. This additional regulation contains yet different definitions and requirements than are applicable to the other institutions the Bureau regulates.

ISSUE #5: State laws regulating private postsecondary and vocational institutions that are administered by the Bureau to protect students and the public against fraud and inadequate education do not regulate institutions that are out-of-state and are offering educational programs and degrees or diplomas via the Internet to California students.

Questions for Issue # 5: *How significant is the situation of out-of state schools offering postsecondary and vocational programs and degrees over the Internet? Is this situation leading to a recurrence of “diploma mills” that defraud students and the public? How? What volume of complaints has the Bureau received as a result of this situation? Is there a need to regulate these enterprises with similar requirements that exist in the Bureaus’ governing statutes? Does the Bureau have any authority to regulate these enterprises? What can or should be done to bring any needed protections to this area of education?*

Background: Increasingly postsecondary and vocational education programs and diplomas and degrees are being offered from schools located outside of California to California students through correspondence courses and electronic media – especially the Internet. The current Reform Act does not provide the Bureau with the legal authority to regulate these institutions and assure the quality and integrity of their programs and degrees, and the protection of their California students. Given the interstate nature of these enterprises, and the lack of a physical location, it is doubtful that California alone can either legally or effectively regulate these institutions and their educational programs despite the significant impact they may have on Californians. There has been some work on this being done by groups at the national level. The Bureau indicates that it has not received many complaints regarding these educational institutions or programs from students. This area seems to represent a serious and apparently increasing gap in the regulatory protection intended by the enactment of the Reform Act – and efforts should be made to address it before it creates a recurrence of the “diploma mill” and student fraud and misrepresentation problems California experienced in the 1980’s.

ISSUE #6: Data collection and dissemination from the private postsecondary and vocational education sector that is similar to the data available from the public postsecondary sector appears inadequate.

Questions for Issue #6: *What types of data systems has the Bureau had to capture relevant data about the sector it regulates and its own performance in administering its governing laws? What type of information does the Bureau's data systems collect? How old is the information provided to the Bureau? If not reasonably current, what can be done to make it so? How accessible is that information and through what means can the Bureau access such information? How does the Bureau make such information available? What response does the Bureau have to criticisms that its information systems, data collection and dissemination are woefully inadequate? What improvements has or can the Bureau make and over what timelines?*

Background: As noted previously, the state of the data collection at the inception of the Bureau's administration was deplorable. The Bureau inherited outmoded Microsoft Excel spreadsheets and a Private Postsecondary Data System which were not capable of providing accurate and meaningful data needed to properly administer the regulatory program. The Bureau reports that it has established a new computer data management system in house (SAIL) that will capture and be capable of reporting on the kind of data it, the schools, students and the public want and need. According to the Bureau, that system had to be developed in-house by its own staff rather than being developed in conjunction with the DCA which has been working for several years on development of a new department-wide data system. As such, there are concerns about the viability of the Bureau's new system, its ability to eventually be integrated with a new system developed by the DCA, and the types of information it can collect and produce.

The institutions regulated by the Bureau produce volumes of information for their approval process, as does the Bureau. In addition, the institutions are required by statute to submit annual reports containing specified information and to file financial audit reports with the Bureau. The Bureau reports that there have been problems with obtaining compliance with these report requirements – so the completeness of the information it has received is still a problem. Also, the timing of the requirement for institutions to submit annual reports appears to be a problem, with the information being reported being as much as a year or two old. Finally, CPEC receives a significant amount of information from public and independent postsecondary schools as a result of requirements they must meet to participate in federal student aid programs. However, similar information which CPEC needs and would use to incorporate the private postsecondary and vocational sector of education in its planning and policy development has not apparently been available from the Bureau and its data systems. Whether the current Bureau system can provide the kind of information that CPEC gets from the public and independent sectors is unknown. This sharing and consolidation of information is important if the private sector that educates a large portion of the student population is to be integrated with the public and independent sectors of private and vocational postsecondary education.

BUDGETARY ISSUES

ISSUE #7: The Bureau's report shows a declining fund reserve from 5.3 months at the end of FY 00-01 to 0.5 months at the end of FY 04-05.

Questions for Issue #7: *Does the Bureau has sufficient revenues to ensure appropriate oversight of the educational institutions and programs under its purview? How does the Bureau plan to rectify its declining fund balance? How are the Bureau's fees determined? When did the 5% reduction in fees occur that was provided for in the legislation that transferred regulation of the private postsecondary and vocational schools to the Bureau in 1998? What effect did that 5% reduction in fees have on the Bureau's administration of the law?*

Background: The Bureau's Sunset Report contains a 5-year report of its fund condition. That fund condition shows the Bureau's reserves at the end of FY 2000-2001 were 2,459,000 or 5.3 months of its annual operating budget. The report shows that reserve had dropped to \$1,304,000 or 2.8 months at the end of the following fiscal year (2001-2002) and is projected to decline to 1.9 months, 1.2 months, and 0.5 months in the next three fiscal years ending with FY 2004-2005. As of September of 2002, the Bureau reports that approximately 300 schools (about 10% of the total regulated) had not yet paid their calendar year 2000 annual dues that were due in July 2002. While the number of schools constitutes a relative small, and according to the Bureau decreasing percentage of the total number of regulated schools, there appears to be an excessive time disparity between the time period for which the annual fee is assessed (2000) and the deadline date by which that assessment is to be paid (July 2002) – as much as least 18 months after the close of the assessed year. The Bureau indicates that it has issued deficiency notices and is in the process of preparing citations and fines to be issued in November 2002 for those schools that remain delinquent.

The Bureau states it anticipates additional revenue to accrue as a result of improved collection and efficiency brought about through the implementation of its new SAIL data collection system and enhanced internal controls and tracking. The Bureau believes that this additional revenue will improve the Bureau's fund condition and provide a higher reserve balance than reflected in its current projects. Whether this will be the case remains to be seen. If the situation doesn't improve as anticipated, steps will need to be taken to either augment the Bureau's revenues or decrease its expenditures.

ISSUE #8: **It is unclear if the Bureau's fees and sources of revenues are related to and commensurate with the costs and expenditures of the Bureau's different programs or if there is cross-subsidization.**

Question #8: *Is an institution's annual gross revenue an appropriate standard for determining the Bureau's fees? Does that standard relate to the amount of work required of the Bureau to regulate the various institutions? Why is there so little difference between the fees charged to institutions whose annual gross revenues are greater than \$1 million per year versus smaller schools with significantly lower revenues? Why is there such a disparity between the fees charged to the degree-granting institutions versus the vocational institutions? Do the fees adequately cover the costs incurred by the Bureau to administer each of its programs? Are any revenues generated in one program area used to subsidize the Bureau's efforts in other program areas? Are there any improvements that can be made regarding the generation of revenue necessary to properly administer the laws? What effect will the Bureau's loss of three staff positions have on its ability to administer the Act?*

Background: The Bureau's authority to collect fees is currently provided for in the Education Code Section 94932. That provision states the Legislature's intent that the fee schedule adopted by the Bureau shall reflect the size of a regulated institution relative to its student enrollment numbers, and that the fees charged shall be in an amount not to exceed the actual costs of approving or renewing

approval of the regulated private institutions. The Bureau is authorized to adopt a fee schedule containing a maximum amount and showing the amount of the fees to be charged within that amount. The Bureau must annually present its proposed budget and fee schedule to the Department of Finance and the Joint Legislative Budget Committee for their review and approval as part of the annual budget process. The fees charged may be increased annually by the Bureau up to the maximum allowable level through the adoption of regulations. Increases in fees above the maximum level must be changed through legislation.

The Bureau's current fee schedule (in effect since 1998) breaks down the regulated institutions into three categories for purposes of fee assessments, based on the institutions' annual gross revenues. The three categories are those with annual gross revenues that are: \$1 million or more (large), \$100,000 to \$1 million (mid-size), and under \$100,000 (small). For degree-granting institutions the approval application fees are: \$4,275 (large), \$4,050 (mid-size), and \$3,825 (small), respectively. For non-degree granting institutions the approval application fees are: \$950, \$900, and \$850, respectively. And for registered short course institutions the application fees are: \$665, \$630, and \$595, respectively.

The range of the other fees institutions pay for various Bureau services are comparable in the narrow range in which they fall from large to small institutions. Given the fairly large disparity in size from the largest to the smallest – the range of fees seems pretty narrow – with small institutions paying nearly as much as large ones.

ISSUE #9: The Student Tuition Recovery Fund (STRF) has historically been underfunded and there have been problems with obtaining the STRF assessments from at least some regulated schools.

Questions for Issue #9: *What is the current fund status of the STRF? What are the projections for the fund balance in the future? What is the amount of any outstanding claims on the STRF? What is the range of age of pending claims? How are the assessments to support the STRF determined? Is this basis actuarially based on potential exposure to STRF liability for claims? If not, why not? Should a different formula be considered – particularly given recent legislation affecting the STRF assessments? What is the current level of schools' compliance with their STRF assessment obligations? What is the timing for collection of STRF assessments and when are they determined to be delinquent? Are their penalties for late payment of STRF assessments, and are they adequate to obtain reasonable compliance with statutory obligations and the needs of the Fund?*

Background: The Bureau's Sunset Report contains a chart showing the condition of the STRF for FYs 2000/2001 to 2004/2005 (projected.) The chart shows the STRF reserves for FY 2000/2001 as \$656,000 or 8.7 months, going to \$1,229,000 but only being 8.2 months in reserve, staying the same amount for FY 2002/2003 but reflected as 9.1 months in reserve, rising to \$1,306,00 (9.7 months reserve) in FY 2003/2004, and rising again to \$1,383,000 (10.3 months) for FY 2004/2005. The relationship of the amounts to months in reserve is unclear.

The Bureau's STRF chart reflects the impact of revenue increases from the special assessment the Bureau made in 2001, and those resulting from the enactment of AB 201 in 2001 which increased the amount of the assessment each regulated institution pays (based on a prescribed amount per dollar of the cost of a student's educational program.) That bill just took effect this year. In 2000 the Bureau

was confronted with over \$2 million in student claims against the STRF resulting from the closure of Career West Academy and the resulting lawsuit of Aguirre v. Hamilton. The STRF contained insufficient monies to pay all of those claims leading the Bureau to impose a special assessment in 2001. However, collection and expenditure from the revenues of that special assessment were halted in September 2001 as a result of a court order in the case of California Association of Postsecondary Schools v. Hamilton.

The STRF is the fund of last resort for students who have lost their tuition from school closures without having received the education or degree for which they paid it. The Bureau does seek to help students obtain forgiveness of the student loans they take out to pay their tuition, but absent that being granted, generally the student's only recourse would be a claim for reimbursement from the STRF. The Bureau reports that during FY 2000/2001, it successfully negotiated approximately \$4 million in student loan discharges on behalf of California students. Nonetheless, the STRF is one of the most critical student protections provided students under state law and was enacted in 1978. Consequently, its solvency and ability to pay off on anticipated (or unanticipated) student claims is important. One item of information that was lacking in the Bureau's report was the number and percentage of institutions that are not current in payment of their quarterly STRF assessments – and the Bureau has been asked to provide that information to the Committee to review.

LICENSURE ISSUES

ISSUE #10: The time period for a school to obtain final approval from the Bureau is often extremely long.

Questions for Issue #10: *Is there currently a backlog of schools waiting for approval or reapproval? How do you define "backlog?" If a backlog still exists, what is the plan to eliminate it and by when? What are the statistics regarding how many schools the BPPVE has approved, in what time periods, for which programs? How long does the school approval process take from shortest to longest, average, and by program? Has the Bureau been in compliance with statutorily prescribed time limits? Is it now? Can the different stages in the Bureau's approval process be broken into steps? If so, how long does it take or it has taken to complete each step? Specifically, how long is the time period between a Bureau's visiting committee's onsite inspection and the issuance of its report? How long thereafter does it take the Bureau to render a decision on a school's application for approval?*

Background: The Bureau reported to the Legislature in April 2000 that it was processing its workload in a timely manner and within prescribed statutory timeframes – including its Degree-Granting, Enforcement & Complaints, and Registered Institutions Programs, its Veterans Title 38 Program, and its Student Tuition Recovery and Closed Schools Units. However, it also reported that application processing and site visit backlogs existed within its Vocational Institutions Program. The Bureau prepared a Backlog Reduction Workplan to eliminate that backlog within an eighteen-month period, from July 1, 2000 through December 31, 2001.

The Legislature adopted Supplemental Report Language in the 2000 Budget Bill requiring the Bureau to report on a quarterly basis, its progress in eliminating the backlog as well as other operational and program information. The Bureau did so and reported in its Sunset Review report that it had eliminated most of the backlog, while continuing to process all current work in a timely manner. It is

unclear how much, if any, backlog still remains at this time. A chart contained in the Bureau's Sunset Report shows that the Bureau received 1,380 applications for approval of postsecondary and vocational (degree-granting and nondegree-granting) institutions during FY 2001/02, approved 1,148 approval applications, approved 1,470 reapproval applications, and denied 31 applications (excluding applications that were withdrawn by applicants).

However, as noted below under Issue #12, there can be a considerable period of time between the Bureau's receipt of a written application for a school's approval and the conduct of the actual site visit that is required before an institution can be granted final approval to operate. The Bureau states that it can relatively quickly make the necessary determination based on the application paperwork to give an institution a "temporary" approval that will let it operate while awaiting the site visit and eventual final approval decision. That time period can exceed a year though it still falls within the current statutory requirements relative to required timeframes. It should be noted that there appears to be no prescribed time frame for how long after a site visit the site visit team has to produce its report and recommendation to the Bureau for its decision on final approval. Given the lengthy time for even timely (within the statutory time limits) work processing – the experience of institutions waiting for a Bureau decision could be as if the Bureau still had a backlog. It may be worthwhile for the Bureau to look at whether it can readjust its personnel to effectuate quicker responses in the application processing.

ISSUE #11: Is there duplication of effort in the Bureau's licensure of degree-granting and vocational schools versus its approval of academic programs that will qualify for the use of veterans' benefits that are offered at California's public and private postsecondary institutions?

Questions for Issue #11: *How many approved veterans' programs are offered by private postsecondary institutions and how many are offered at public postsecondary institutions? Are all of the private institutions subject to the requirement to be approved by the Bureau apart from the approval required for offering veterans' programs? If not, how many are? What is entailed in the Bureau's approval of the school versus what is entailed in the Bureau's approval of veterans' programs offered by that approved school? Is there duplication of effort, or can greater efficiencies be obtained by combining both approval processes in some manner?*

Background: The Bureau approves approximately 3000 private postsecondary degree-granting and nondegree-granting institutions unless exempted, to operate in California. Concurrently, the Bureau also approves educational programs offered by approximately 950 postsecondary institutions, including public institutions, for veterans utilizing their GI Bill educational benefits. Both approvals can occur at the same institution – leading to the question of whether the two functions duplicate each other in some ways and whether the two approvals could be combined for increased efficiency and cost savings to the Bureau. Payment for the general institutional approval is made by the institutions, while payment for the veteran's approval is derived from an annual grant amounting to \$1.1 million.

ISSUE #12: It seems that the law's protections may be undermined by the Bureau's issuance of "temporary approvals" just based on an institution's submittal of the required application paperwork and what can be a long time period before the Bureau conducts the required site visit necessary for it to issue a final approval.

Questions for Issue #12: *How often does the Bureau use temporary or conditional approvals? On what basis are they granted? How long thereafter does it take for the Bureau to conduct a site visit to the school facility, and thereafter make a final approval decision? What percentage and number of schools that have been granted temporary approval have thereafter failed to obtain a final approval from the Bureau? What effect does such final approval denial have on a school's students?*

Background: The approval process employed by the Bureau, as specified in state law, involves the Bureau's approval of the extensive written application package submitted by each institution seeking approval to operate, or to offer new educational programs. If an institution appears, based on its written application, to comply with all of the statutory requirements then the Bureau issues a "temporary" approval to the school to operate. Sometime thereafter, between 90 to as much as 360 days, the Bureau is required to conduct an onsite inspection of the institution's physical facilities. This onsite inspection is done by a team of persons with expertise in evaluating the quality of educational offerings as well as the financial condition and other requirements necessary to comply with the law. Sometime thereafter, though how long is unclear, the site team completes a site visit report on its findings and makes a recommendation to the Bureau regarding the granting of approval. If the site visit reveals that the school is in compliance then the Bureau will issue it a "final" approval for the school to operate.

While the temporary approval process legally allows an institution to operate, it does not carry the same appearance of assurance of integrity and financial stability that a final approval confers. The long time period that can and does occur between the initial temporary approval and the onsite visit and subsequent approval decision by the Bureau generates concerns by both the institutions who want to gain final approval as quickly as possible, and by students and others who want the assurance that what has been provided to the Bureau on paper is actually present at the educational site of the temporarily approved institution. It is not known by Committee staff the number or percentage of schools that fail to obtain final approval after having been granted temporary approval – or the effect the denial of final approval has on the viability of the educational courses taken by students during that time. The range of the time periods for completion of each step in the approval process from receipt of an application for approval through the granting of final approval would seem to be important in determining if the Bureau has a "backlog" of approvals and what completion of approvals in a "timely" manner means in actuality.

ISSUE #13: **Current state law imposes different requirements on schools depending on whether they offer a degree or not; and current law also exempts some schools and programs from regulation.**

Questions related to Issue #13: *What is the rationale for imposing different requirements on the different types of schools and programs? Would it be reasonable reduce the differences in requirements for different types of schools or use a different criteria for imposing the current requirements? What has been the Bureau's experience with the new category of registered schools with still different requirements that was added to state law with the establishment of the Bureau? Should this category be retained or changed, and if so, why? What is the rationale for the various exemptions in the law? Are these exemptions sufficiently clear so as to be readily understood and enforced? Should any of the exemptions be eliminated, and if so, why? Could use of the existence of not only WASC but other recognized regional or national accrediting bodies be used to substitute for*

some of the duties currently required of the Bureau – while still preserving at least the current level of protection afforded by state law?

Background: The Reform Act contains different requirements for its approval of institutions. All institutions subject to the Act must comply with a common set of requirements related to its financial integrity and stability, student protections relating to school catalog, student enrollment agreements, identification of designated agents, annual reporting, qualifications of faculty and staff, and physical facilities. Beyond these there are additional requirements based upon the type of institution – degree-granting and/or vocational. Vocational institutions must comply with requirements of the Maxine Waters Act portion of the Reform Act that contains additional student protections including meeting certain performance standards regarding the rate of course completion by an institution’s students and the level of employment of graduates of the institution’s programs. Degree-granting institutions must meet a different set of standards that require the institution to demonstrate that: (1) the program of study for which the academic degree is granted provides the curriculum necessary to achieve it professed or claimed academic objective for higher education, and (2) the institution requires an appropriate level of academic achievement for that degree.

In administering the provisions of the Reform Act, the Bureau is required to assess whether an institution or educational program is exempt from all or some of the Act’s many requirements. This involves first determining whether or not an institution falls within the statutory criteria of the definition of a “private postsecondary educational institution” that is subject to regulation. Excluded from that definition are nonprofit religious institutions that offers a degree limited to its religious principles, WASC-accredited institutions operating either as nonprofit public benefit corporations or that exclusively confer degrees upon completion of a course of study of two or more years, or an institution that complies with specified criteria and is accredited by a national accrediting agency recognized by the USDE.

Beyond that, there are several different exemption sections located in separate places in the Reform Act that contain limitations based on various criteria. These can lead to an institution being exempt from some but not all of the various provisions of the Reform Act. Concerns have been raised in the past that the exemptions are not sufficiently clear so as to be readily or consistently understood and applied. Also, accredited institutions that have generated a high student loan default rate have raised the issue of whether accreditation alone sufficiently provides the level of protection that is intended to be provided by the Reform Act. In the past CPEC has made recommendations that for this reason, some of the exemptions should be limited or narrowed – bring such institutions under the regulation of the Reform Act.

The theory behind exemption of WASC-accredited institutions is that the criteria that must be met to gain accreditation cover most of the same things as those used in obtaining approval under the Reform Act. Thus it was felt at the time the exemption was enacted that accreditation provided sufficient assurance of the integrity of an institution’s educational programs and degrees, and its financial stability. However, there are several other regional accrediting agencies in addition to WASC that are recognized by the USDE and that have accreditation criteria that are very similar to those used by WASC. Perhaps such accreditation should also serve as the basis for exemption from some or all of the provisions of the Reform Act if such accreditation is determined to assure the same protections as intended to be provided through the Reform Act.

ISSUE #14: The Bureau staff is responsible for making subjective and qualitative assessments of a school and its programs, including the quality of its curriculum.

Questions for Issue #14: *What expertise does the Bureau use in performing the various types of assessments necessary to make a decision on a school's application for approval? Does the Bureau's staff have such expertise or must the Bureau rely on personnel outside the agency? The Bureau employs Education Specialists on its staff to review applications for approval – what background in education or experience do these staff have to be qualified to assess a school and its programs? What training, procedure manuals, etc., does the Bureau provide to staff to assist them with making proper assessments? Is there an appeal process for schools that are dissatisfied with decisions made by Bureau staff, and with the Bureau's overall final approval decision? What is the time frame for any appeal process?*

Background: For institutions that are subject to regulation and approval by the Bureau, the Bureau must evaluate not only an institution's financial situation and compliance with various student protection requirements, but must also perform an assessment of the quality of any educational courses and degrees the institution offers. As part of its process for granting a final approval, the Bureau must perform a site inspection using site visit teams that are staffed by persons meeting specified statutory requirements relative to their expertise and education (e.g., that a reviewer have a degree of at least the level of the educational program being reviewed.) The law permits an institution to challenge the credentials of site visit team members to ensure the requisite level of professionalism and compatibility.

However, the internal staff of the Bureau does not appear to have to meet the same level of expertise as the site inspection staff, either as to academic degree levels or as to their experience of working within an academic or institutional setting. The Bureau's approval process involves more than just the evaluation and report of the site visit team. There also appear to be numerous decisions that fall to the Bureau's staff regarding an institution's compliance with not just the clear, more objective requirements of the Reform Act, but also determinations regarding its compliance with more subjective requirements that call for a quality assessment of the educational courses, faculty qualification, among other things.

For example, for issuing a temporary approval to an institution to operate prior to the Bureau's onsite inspection and final approval determination, the Bureau must evaluate whether the institution appears to comply with all of the requirements of the Reform Act. These include often subjective criteria regarding the quality of the institution's courses, and perhaps whether the program of study for which a degree is granted provides the necessary curriculum to achieve the professed or claimed academic objective, and whether the institution requires a level of academic achievement from the student appropriate to the degree. Having the relevant professional or academic background would seem to be important in making such an evaluation and reaching an approval decision. Anecdotally, concerns have been raised that contradictory determinations occur depending upon which particular staff person an institution may contact. This concern relates to the level of training and guidance that is provided to the Bureau's staff to enable them to perform their work in a consistent manner.

ENFORCEMENT ISSUES

ISSUE #15: The Act requires that the Bureau expend at least 50% of its expenditures on enforcement related activities. The Bureau reports that it has been expending at least 67% of its budget on those activities.

Questions for Issue #15: *How does the Bureau define “enforcement related activities,” i.e., what specific actions or functions does the Bureau include in defining what is “enforcement?” How did the Bureau determine what portion of its various resources are actually spent on enforcement related activities? What portion of the Bureau’s personnel are performing its enforcement activities?*

Background: The Reform Act, as amended by AB 71 in 1997, requires the Bureau on and after January 1, 1998, to use a minimum of 50% of the funds appropriated to it to cover the costs of enforcing all of the following: (1) enforcing the Reform Act and related regulations, (2) ensuring that independent onsite evaluations and random and targeted inspections and audits are conducted, and that students have easy access to information concerning their rights to contract cancellation, withdrawal, and remedies, and (3) mediating student complaints to achieve balanced outcomes for students and institutions.

The Bureau’s report covering the time period from FY 1998-99 through FY 2001-2002 shows that the Bureau has expended between 67% to 68% of its total annual expenditures for compliance and enforcement. The Bureau’s report notes that this figure was arrived at based on a program-by-program assessment of enforcement related expenditures. Exactly what activities the Bureau considers to be “enforcement-related” is unclear – though it appears to involve apportionment of the time spent by various of the Bureau’s staff on a range of activities beyond just site-inspections and complaint handling.

ISSUE #16: The Bureau’s process for handling complaints has been criticized for being unresponsive and extremely slow.

Questions for Issue #16: *Describe in detail the Bureau’s process for handling complaints, including what the various steps are in the process, and the types and number of personnel involved therein. Is there currently a backlog of complaints? What is the number of complaints received by the Bureau annually – broken out by related program? What are the timeframes for the various steps in the process, and how long has it taken or does it take to bring those complaint cases to a final resolution? Can you break out what those resolutions have been related to the number of complaints? Has the Bureau established the arbitration program required by Education Code Section 94778? If not, why not, and what are the Bureau’s plans for doing so? What problems does the Bureau have in resolving the complaints it receives and doing so in a timely manner? What can be done to improve the Bureau’s enforcement program?*

Background: The Bureau’s report states that it annually receives approximately 700 complaints from students alleging violation of private postsecondary laws including violation of various provisions of their student enrollment agreements such as refund policy, misleading advertisement, quality of education and instructor qualifications, and unlicensed school activities. One of the provisions of AB 201 enacted in 2001 requires the Bureau to develop regulations for its procedures for complaint

processing and complaint disclosure. The Bureau reports that development of those complaint regulations is underway – though no timetable for anticipated adoption was noted in the Bureau’s report.

A chart in the Bureau’s report showing its activity related to enforcement complaint mediation statistics has no figures for the first year and a half of its operation – FY 1997/1998 (1/2), and FY 1998/1999. That chart also shows that for FY 1999/2000 and FY 2000/2001 a significant disparity in the number of complaints “received” versus complaints “filed” – the significance of which is unclear. The “case aging” time frames from receipt of complaints to their eventual resolution or closure are not reflected in the Bureau’s report. In order to see how responsive the Bureau is in handling the complaints it receives, the Bureau has been asked to provide the Committee with detailed information regarding its complaint handling process, timelines, and performance. The Bureau’s website – www.bppve.ca.gov – provides consumers with a copy of its complaint form. It appears that the form must be downloaded to be sent back by mail, as it requires the complainant’s signature.

ISSUE #17: A number of private institutions subject to regulation by the Bureau have not submitted the required annual reports, student completion and job placement reports, and licensing fees and STRF assessments.

Questions for Issue #17: *How many institutions subject to regulation by the Bureau are currently out of compliance with the law’s requirements? What is the specific breakdown as to which requirements each of these institutions are not in compliance? What enforcement options does the Bureau have to enforce compliance with these requirements? What actions has the Bureau taken to increase compliance with these requirements? How successful have these efforts been? Are there additional steps the Bureau will employ or recommend to ensure timely compliance with all of the law’s requirements?*

Background: Institutions subject to the Bureau’s regulation are required by law to submit annual reports containing information regarding a specified list of items including: the number of enrolled students, the number and type of degrees awarded, program completion rates, the tuition schedule and fees, financial information, a statement regarding the status of the institution with respect to its payments to the STRF, etc.

The Bureau reports that school data regarding the program completion rate of its students and the data regarding the employment rate for its graduates is available to the extent that the schools have made that data available via their submission of the required annual reports. However, the Bureau states that submission of annual reports (as well as fees noted elsewhere in this Background Paper) by institutions has been problematic and compliance with reporting the required data had been sporadic. The Bureau states that it has undertaken enforcement steps to increase compliance and enhance the provision of completion and employment placement data by schools, to enable it to improve its own subsequent reporting of that data. Compliance with the Reform Act’s reporting requirements is the starting point in any effort to have the data that accurately reflects what the circumstances are in the private postsecondary and vocational education sector. Such data is necessary if efforts are ever to be successful in integrating the private with the public and independent sectors of postsecondary educational policy and planning.

ISSUE #18: Concerns have been raised in the past that there are a large number of schools subject to the Act that are operating illegally without the required Bureau approval.

Questions related to Issue #18: *Is illegal school operation a large problem? How many schools are believed to be operating illegally? How does the Bureau become aware of such schools? What does the Bureau do when they find these situations? Does the Bureau need additional enforcement authority against these operations?*

Background: According to the Bureau, it receives complaints about unlicensed schools operating illegally from students. The Bureau's Enforcement Program issues notices to schools that may be operating without the necessary Bureau approvals. If a school requires Bureau approval, they are required to submit an application for approval. On a case-by-case basis, the Bureau assesses the potential impact on students and school if the unapproved school were to be required to close and/or make refunds to students. If the Bureau determines a school is exempt or outside the scope of the Bureau's approval, that exemption is noted for future reference and student inquiries. A chart in the Bureau's report notes that for FYs 1999/2000 and 2000/2001, there were 118 and 153, respectively, complaints "filed" regarding unlicensed activity. However, this figure was noted as also including Certificate of Authorization and school denials – so the actual number of unlicensed, illegally operating schools is unclear. The Bureau indicates that unlicensed schools that the Bureau contacts typically submit an application for approval to operate. The Bureau does not report what it does when an unlicensed school fails to get into compliance with the law, or fails to obtain approval.

ISSUE #19: How effective has the Bureau been in dealing with the problem of school closures and obtaining student loan discharges?

Questions for Issue #19: *What are the statistics, chronologically, for the number of regulated schools that have closed? How many of these closures were "anticipated" vs. those that were not? What is the Bureau required to do when a school closes? What does the Bureau specifically do when a school is going to close (anticipated) or when it finds out that a school has closed? What are the timeframes related to the Bureau's actions? What has the Bureau been able to do to help the students of the closed schools? What are the statistics regarding loan discharges for students in these situations? Have loan discharges actually been granted? What changes could be made to improve the Bureau's ability to assist in these situations?*

Background: The Bureau reports that school closures are an extremely vexing problem for the Bureau and for the affected students. The Bureau has developed a "triage" team approach to the problem of school closures whereby staff (sometimes accompanied by local deputy district attorneys) visit the site as soon as it learns about the closure in order to advise students of their rights and options, and ensure the preservation of and access to student records. The Bureau states the relative success of this initial triage effort largely determines the extent to which it can assist students in exercising their options and rights. The Bureau reports that it has worked to reconstruct a functional working relationship with the USDE which requires student records for purposes of approving the discharge of financial aid loans.

In FY 2000-01, the Bureau reports it successfully negotiated approximately \$4.0 million in student loan discharges on behalf of California students who suffered financial hardship as a result of unforeseen private postsecondary school closures. The Bureau conducted these loan discharge

negotiations with representatives of the USDE and various private student loan lenders. The Bureau's report indicates that there is general agreement between BPPVE, USDE, and the lenders that the loans in question are subject to discharge. While some loans have already been discharged, the remainder are still in process of a case by case review involving loan histories that are reported to be often over a decade old. At the time the Bureau wrote its Sunset Report, the USDE had been unable to provide the Bureau with information on how many loans had been discharged and how many were still being processed.

The Bureau also states that its School Closure Unit staff who are sent immediately to a school closure site provide students with the Bureau's "Options for Students Faced with a School Closure" brochure that provides step-by-step direction and analysis of student rights and options including: the students; option to transfer to another school or to participate in "teach-outs" (where another school takes over the closed schools responsibility for providing courses), obtaining school refunds for any pre-paid tuition for services not yet rendered, and claims to the STRF for reimbursement for tuition losses. The Bureau reports that this information is also made available on its website.

The Bureau states that discussion of the timeframe for its actions regarding closed schools is virtually meaningless because there is so much variance in the circumstances – so that each must be viewed on a case-by-case basis depending on what those circumstances (bankruptcy filing) are. Still it would be helpful to know how many school closures have occurred during the Bureau's tenure, the number of students affected, and what actions and how quickly the Bureau took action in those cases. It may be useful if the Bureau was to survey the affected students to ascertain the effectiveness, and *perceived* effectiveness of the Bureau's efforts.

CONSUMER, LICENSEE, AND EDUCATION COMMUNITY OUTREACH ISSUE

ISSUE #20: How much has the Bureau implemented use of electronic format rather than hard-copy paper to reduce the paperwork burden on the Bureau and the regulated institutions?

Questions for Issue #20: *What action has the Bureau taken to move its operation from requiring hard copy information to electronic and computerized processes? Are their plans to computerize additional things in the future that would reduce the administrative burdens and increase the Bureau's efficiency?*

Background: The Bureau's application package for its institution approvals is very lengthy and extensive. This is still provided to institutions in hard copy form – and results in voluminous hard copy documents once the institution completes it along with attachments and sends it back for processing. The Bureau's website contains a substantial amount of information including guidance for persons choosing a postsecondary school, a directory of degree, non-degree, and registered postsecondary programs, the Bureau's complaint form, an information sheet providing guidance and options for students confronting a school closure, the Bureau's institution fee schedule, extensive information on the methodology and criteria for determining if and how an institution falls within the Bureau's regulatory oversight, information on Veteran's educational benefits, notices of regulatory hearings, etc. Despite this, the Bureau still has to receive and handle consumer complaint in hard copy, and as noted still processes school applications in hard copy form as well. Given the burden of handling all this paperwork, any ability to reduce the paperwork by use of electronic media would appear to be one way the Bureau could free up its limited resources for other duties.